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FILED

10 MAR 26 PM 4:16

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY: *SR*

DEPUTY

10 Attorneys for the Plaintiff
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

Victor Catala Plaintiff, v. Midland Credit Management, Inc., and Ocwen Loan Servicing, LLC Defendants.	Case Number: 10 CV 0662 WQH WMc Complaint For Damages Jury Trial Demanded
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INTRODUCTION

1. The United States Congress has found abundant evidence of the use of
 2 abusive, deceptive, and unfair debt collection practices by many debt
 3 collectors, and has determined that abusive debt collection practices
 4 contribute to the number of personal bankruptcies, to marital instability, to the
 5 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
 6 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
 7 “FDCPA”), to eliminate abusive debt collection practices by debt collectors,

ORIGIN

1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

- 4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.
- 13 3. Victor Catala, (Plaintiff), through Plaintiff's attorneys, brings this action to
14 challenge the actions of Midland Credit Management, Inc., ("Midland") and
15 Ocwen Loan Servicing, LLC, ("Ocwen") or collectively referred to as
16 "Defendants", with regard to attempts by Defendants to unlawfully and
17 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused
18 Plaintiff damages.
- 19 4. Plaintiff makes these allegations on information and belief, with the exception
20 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
21 Plaintiff alleges on personal knowledge.
- 22 5. While many violations are described below with specificity, this Complaint
23 alleges violations of the statutes cited in their entirety.
- 24 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
25 were knowing and intentional, and that Defendant did not maintain
26 procedures reasonably adapted to avoid any such violation.

JURISDICTION AND VENUE

PARTIES

- 12 11. Plaintiff is a natural person who resides in the City of San Diego, County of
13 San Diego, State of California.

14 12. Midland is located in the City of San Diego, the County of San Diego, and the
15 State of California.

16 13. Ocwen Loan Servicing, LLC is located in the City of Atlanta, State of
17 Georgia.

18 14. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer”
19 as that term is defined by 15 U.S.C. § 1692a(3).

20 15. Defendants are persons who uses an instrumentality of interstate commerce or
21 the mails in a business the principal purpose of which is the collection of
22 debts, or who regularly collects or attempts to collect, directly or indirectly,
23 debts owed or due or asserted to be owed or due another and is therefore a
24 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

25 16. Plaintiff is a natural person from whom a debt collector sought to collect a
26 consumer debt which was due and owing or alleged to be due and owing from
27 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
28 1788.2(h).

1 17. Defendants, in the ordinary course of business, regularly, on behalf of
2 himself, herself, or others, engages in debt collection as that term is defined
3 by California Civil Code § 1788.2(b), is therefore a debt collector as that term
4 is defined by California Civil Code § 1788.2(c).

5 18. This case involves money, property or their equivalent, due or owing or
6 alleged to be due or owing from a natural person by reason of a consumer
7 credit transaction. As such, this action arises out of a consumer debt and
8 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

10 19. At all times relevant to this matter, Plaintiff was an individual residing within
11 the State of California.

12 20. At all times relevant, Defendants conducted business within the State of
13 California.

14 21. Sometime before April 17, 2008, Plaintiff is alleged to have incurred certain
15 financial obligations.

16 22. These financial obligations were primarily for personal, family or household
17 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
18 §1692a(5).

19 23. These alleged obligations were money, property, or their equivalent, which is
20 due or owing, or alleged to be due or owing, from a natural person to another
21 person and are therefore a “debt” as that term is defined by California Civil
22 Code §1788.2(d), and a “consumer debt” as that term is defined by California
23 Civil Code §1788.2(f).

24. Sometime thereafter, but before April 17, 2008, Plaintiff allegedly fell behind
25. in the payments allegedly owed on the alleged debt. Plaintiff currently takes
26. no position as to the validity of this alleged debt.

27 25. Subsequently, but before April 17, 2008, the alleged debt was assigned,
28 placed, or otherwise transferred, to Ocwen and Midland for collection.

- 1 26. On or about April 17, 2008, Ocwen mailed a dunning letter to Plaintiff. A few
2 days later, Plaintiff received that letter.
- 3 27. This communication to Plaintiff was a “communication” as that term is
4 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent
5 with 15 U.S.C. § 1692g(a).
- 6 28. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
7 defines that phrase, and an “initial communication” consistent with Cal. Civ.
8 Code § 1812.700(b).
- 9 29. Shortly after receiving this initial communication from Ocwen, on behalf of
10 Midland, Plaintiff contacted Ocwen by telephone. During this conversation
11 Plaintiff and Ocwen agreed that Plaintiff would pay a certain amount to settle
12 the alleged account in full. Plaintiff did pay this amount by telephone through
13 an electronic check and/or debit.
- 14 30. On or about August 21, 2008 Ocwen, on behalf of Midland, sent Plaintiff a
15 letter acknowledging the settlement of the account and Plaintiff’s payment.
16 Defendants acknowledge the account was paid in full and release any
17 additional amount alleged owing.
- 18 31. On or about Decmeber 3, 2008 Ocwen, on behalf of Midland, again sent
19 Plaintiff another letter acknowledging the settlement of the account and
20 Plaintiff’s payment. Defendants acknowledge the account was paid in full
21 and release any additional amount alleged owing.
- 22 32. Despite having settled the account, Defendants sold and/or transferred the
23 remaining alleged balance to a third party SIMM Associates, Inc.
- 24 33. Through this conduct, Defendants used a false, deceptive, or misleading
25 representation or means in connection with the collection of a debt.
26 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
27 1692e(10).
- 28

- 1 34. Through this conduct, Defendant used an unfair or unconscionable means to
2 collect or attempt to collect any debt. Consequently, Defendant violated 15
3 U.S.C. § 1692f.
- 4 35. Because this violated certain portions of the federal Fair Debt Collection
5 Practices Act as these portions are incorporated by reference in the Rosenthal
6 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
7 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 8 36. Plaintiff sent a written dispute to SIMM Associates, Inc. stating that the
9 account had been paid and settled and requested proof of the amount alleged
10 owed.
- 11 37. SIMM Associates, Inc. knowing the account was not owed stopped collecting
12 on this alleged debt.
- 13 38. Despite knowing Plaintiff had paid this account and a balance was not owed,
14 Midland again began attempting to collect on the alleged remaining settled
15 balance of \$711.88.
- 16 39. On or about February 11, 2010, Plaintiff received a letter from Midland. This
17 letter was a “communication” as 15 U.S.C. §1692a(2) defines that term, and a
18 “debt collection” as that phrase is defined by Cal. Civ. Code § 1788.2(b).
- 19 40. Through this conduct, Defendant made a false representation concerning the
20 character, amount, or legal status of a debt. Consequently, Defendant violated
21 15 U.S.C. § 1692e(2)(A) as Midland knew the debt was settled and not
22 legally owed.
- 23 41. Through this conduct, Defendant used a false, deceptive, or misleading
24 representation or means in connection with the collection of a debt.
25 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
26 1692e(10).

HYDE & SWIGART
San Diego, California

42. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f.

43. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

44. On or about February 24, 2010, Plaintiff sent to Midland a letter in which Plaintiff advised Midland that Plaintiff wished Defendant to cease further communication with the Plaintiff in a manner consistent with the requirements pursuant to 15 U.S.C. § 1692c(c).

45. Midland received Plaintiff's letter disputing the debt, evidence that Plaintiff paid the account and a request to stop collection activity on February 25, 2010.

46. On or about March 2, 2010, Defendant telephoned Plaintiff in an attempt to collect the alleged debt after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c). Consequently, Defendant violated 15 U.S.C. § 1692c(c). Because this action violated the language in 15 U.S.C. § 1692c(c), Defendant also violated Cal. Civ. Code § 1788.17.

47. On or about March 11, 2010, Defendant telephoned Plaintiff in an attempt to collect the alleged debt after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c). Consequently, Defendant violated 15 U.S.C. § 1692c(c). Because this action violated the language in 15 U.S.C. § 1692c(c), Defendant also violated Cal. Civ. Code § 1788.17.

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

- 1 48. Plaintiff repeats, re-alleges, and incorporates by reference, all other
2 paragraphs.
3
4 49. The foregoing acts and omissions constitute numerous and multiple violations
5 of the FDCPA, including but not limited to each and every one of the above-
6 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
7
8 50. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
9 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against each and
10 every Defendant; statutory damages in an amount up to \$1,000.00 pursuant to
11 15 U.S.C. § 1692k(a)(2)(A) against each and every Defendant; and,
12 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
against each and every Defendant.

13 **COUNT II**

14 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)**

15 **CAL. CIV. CODE §§ 1788-1788.32**

- 16 51. Plaintiff repeats, re-alleges, and incorporates by reference, all other
17 paragraphs.
18 52. The foregoing acts and omissions constitute numerous and multiple violations
19 of the RFDCPA, including but not limited to each and every one of the above-
20 cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32.
21 53. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
22 any actual damages pursuant to Cal. Civ. Code § 1788.30(a) against each and
23 every Defendant; statutory damages for a knowing or willful violation in the
24 amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); against each
25 and every Defendant and reasonable attorney's fees and costs pursuant to Cal.
26 Civ. Code § 1788.30(c) from against each and every Defendant.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and

1 Plaintiff be awarded damages from Defendant, as follows:

- 2 • An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1)
3 against each and every Defendant;
- 4 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
5 1692k(a)(2)(A) against each and every Defendant;
- 6 • An award of costs of litigation and reasonable attorney's fees, pursuant
7 to 15 U.S.C. § 1692k(a)(3) against each and every Defendant;
- 8 • An award of actual damages pursuant to California Civil Code §
9 1788.30(a) against each and every Defendant;
- 10 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
11 § 1788.30(b) against each and every Defendant;
- 12 • An award of costs of litigation and reasonable attorney's fees, pursuant
13 to Cal. Civ. Code § 1788.30(c) against each and every Defendant.

14 54. Pursuant to the seventh amendment to the Constitution of the United States of
15 America, Plaintiff is entitled to, and demands, a trial by jury.

16 Date: 3/23/10

Hyde & Swigart

17 
18 By: _____
19 Joshua B. Swigart
20 Attorneys for Plaintiff

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Victor Catala

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Midland Credit Management, Inc., and Ocwen Loan Servicing,
LLC

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(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart

411 Camino Del Rio South Suite 301, San Diego, CA 92108
619 233 7770County of Residence of First Listed Defendant San Diego

CLERK U.S. DISTRICT COURT, SAN DIEGO

SOUTHERN (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

DEPUTY

Attorneys (If Known)

10CV 0662 WQH

WMc

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 386 Product Liability	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 410 Voting	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 443 Housing/ Accommodations	<input checked="" type="checkbox"/> 890 Other Statutory Actions	
REAL PROPERTY	CIVIL RIGHTS	PRIISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395f)	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	Habens Corpus:	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 447 Other Civil Rights	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights	FEDERAL TAX SUITS	
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	<input type="checkbox"/> 892 Economic Stabilization Act
			<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 893 Environmental Matters
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq.

VI. CAUSE OF ACTION

Brief description of cause:
FDCPA

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/24/10

FOR OFFICE USE ONLY

RECEIPT # 11598 AMOUNT \$350 -

APPLYING IFFP

JUDGE

MAG. JUDGE

CR

03 26-10

ORIGIN

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS011598
Cashier ID: mbain
Transaction Date: 03/26/2010
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE
For: CATALA V MIDLAND CREDIT
Case/Party: D-CAS-3-10-CV-000662-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3777
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.